

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TERRY STEWART,	§	
	§	
Plaintiff and	§	
Counter-Defendant,	§	
	§	
v.	§	
	§	
INTERNATIONAL ASSOCIATION OF	§	
MACHINISTS AND AEROSPACE	§	
WORKERS and INTERNATIONAL	§	
ASSOCIATION OF MACHINISTS AND	§	CIVIL ACTION NO. H-13-1391
AEROSPACE WORKERS, DISTRICT 19,	§	
	§	
Defendants and	§	
Counter-Plaintiffs,	§	
	§	
v.	§	
	§	
DON E. HALL,	§	
	§	
Counter-Defendant.	§	

ORDER ADOPTING IN PART
MEMORANDUM, RECOMMENDATION, AND ORDER

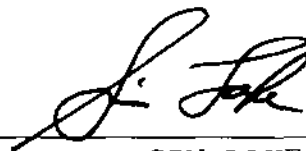
On August 14, 2014, a Memorandum, Recommendation, and Order was entered, recommending in part that the Defendants' motions for summary judgment be granted (Docket Entry No. 132). The court has considered the objections of the parties and the applicable law. The court is of the opinion that the Memorandum, Recommendation, and Order should be adopted with respect to the Defendants' motions for summary judgment. Stewart's race discrimination claim against District 19 arising from his non-selection as General Chairman remains for trial.

The Memorandum, Recommendation, and Order also recommended that Stewart's motion for summary judgment on Defendants' counterclaims be granted in part and denied in part. The court has considered the objections of the parties and the applicable law. The court is of the opinion that the Memorandum, Recommendation, and Order should be adopted with respect to Stewart's motion for summary judgment. The Defendants' state law claim against Stewart for breach of fiduciary duty remains for trial.

Counter-defendant Don Hall ("Hall") did not file a motion for summary judgment on the Union Defendants' claims against him. However, based on the magistrate judge's recommendation that there was no evidence to support a civil conspiracy claim against Stewart and Hall, the magistrate judge, sua sponte, recommended that the civil conspiracy claim against Hall be dismissed. The recommendation did not address the Union Defendants' claim against Hall for breach of fiduciary duty under 29 U.S.C. § 501. The Union Defendants have objected to this recommendation, while Hall argues that the recommendation should be adopted. The court agrees with the Union Defendants that summary judgment should not be granted on their claims against Hall in the absence of a motion marshaling the undisputed facts in light of the relevant law. Accordingly, the court sustains the Union Defendants' objections. The Union Defendants' claims against Hall remain for trial.

Accordingly, the Memorandum, Recommendation, and Order (Docket Entry No. 132) is **ADOPTED in part** and **DENIED in part**.

SIGNED at Houston, Texas, on this 20th day of October, 2014.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE